

Senate Bill No. 2153

Passed the Senate August 18, 2000

Secretary of the Senate

Passed the Assembly August 10, 2000

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 639 and 1282.4 of the Code of Civil Procedure, relating to civil proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 2153, Schiff. Civil proceedings: referees: arbitrators.

(1) Existing law provides for the appointment of a referee to hear and determine, among other things, discovery motions and disputes relevant to discovery in a civil action. Existing law also authorizes a party to file a peremptory challenge to a person appointed as a referee on specified grounds.

This bill would require that a motion to disqualify a referee appointed to hear and determine discovery matters be made either (1) within 10 days after notice of the appointment, or, if the party has not yet appeared in the action, within 10 days after the appearance, or (2) at least 5 days before the date set for the hearing, if the referee assigned is known at least 10 days before the date set for the hearing and the discovery referee has been assigned only for limited discovery purposes. The bill would also require the order appointing a discovery referee to indicate whether the referee is being appointed for all discovery purposes in the action.

The bill would incorporate additional changes to Section 639 of the Code of Civil Procedure made by AB 2912 to become operative only if both bills are enacted and this bill is enacted last.

(2) Existing law, effective only until January 1, 2001, permits persons admitted to the bar of any other state to represent a party in an arbitration proceeding in this state, or to render legal services in this state in connection with an arbitration proceeding in another state; requires out-of-state attorneys representing a party in a California arbitration proceeding to serve upon the arbitrator, the State Bar of California, the parties, and counsel a certificate containing specified information prior to the



first scheduled hearing in the arbitration; and permits any party to an arbitration arising under certain collective bargaining agreements to be represented by any person.

This bill would extend these provisions until January 1, 2006.

The people of the State of California do enact as follows:

SECTION 1. Section 639 of the Code of Civil Procedure is amended to read:

639. When the parties do not consent, the court may, upon the application of any party, or of its own motion, direct a reference in the following cases:

(a) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(d) When it is necessary for the information of the court in a special proceeding.

(e) When the court in any pending action determines in its discretion that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon. In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(1) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.



(2) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(f) When a referee is appointed pursuant to subdivision (e), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

SEC. 1.5. Section 639 of the Code of Civil Procedure is amended to read:

639. (a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

(b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.



(B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

(1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

(3) The subject matter or matters included in the reference.

(4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party,

not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by January 1, 2003. This subdivision shall become inoperative on January 1, 2004.

SEC. 2. Section 1282.4 of the Code of Civil Procedure, as amended by Section 1 of Chapter 915 of the Statutes of 1998, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.



(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

(1) The attorney's residence and office address.

(2) The courts before which the attorney has been admitted to practice and the dates of admission.

(3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(5) That the attorney is not a resident of the State of California.

(6) That the attorney is not regularly employed in the State of California.

(7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(9) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted.

(10) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) Failure to timely file the certificate described in subdivision (c) or, absent special circumstances,

repeated appearances shall be grounds for disqualification from serving as the attorney of record in the arbitration in which the certificate was filed.

(e) An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.

(f) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(h) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(i) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent of the Legislature to respond to the holding in *Birbrower v. Superior Court* (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter *Birbrower*), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (g), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings



by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature’s intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in *Birbrower* to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that *Birbrower* is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (h), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(j) This section shall be operative until January 1, 2006, and on that date shall be repealed.

SEC. 3. Section 1282.4 of the Code of Civil Procedure, as added by Section 2 of Chapter 915 of the Statutes of 1998, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes the waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) This section shall become operative on January 1, 2006.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 639 of the Code of Civil Procedure proposed by both this bill and AB 2912. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 639 of the Code of Civil Procedure,

and (3) this bill is enacted after AB 2912, in which case Section 1 of this bill shall not become operative.



Approved _____, 2000

Governor

